(exclusive of any payment for the services provided by any local authority) . . . ."

and the burden therefore is upon the appellant to adduce evidence to show what payment he made which would have brought him within the protection of the Ordinance. In the evidence recorded by the learned president the appellant stated "I admit $50 is rent and $50 for furniture, telephone and water". Allowance for furniture at 1/60th will be just over $3 and for very old furniture at that the price paid for which when new being $200. It was within the means of the appellant to have adduced evidence as to the amount of charges for water he had to pay which would fall within services provided by a local authority. Telephone however is not a service of the local authority and for that you have the authority of the case of *Ng Hoo Kim* v. *K. A. Abdullah & Co.*[2] where it was held that since taking over by the Central Electricity Board, now National Electricity Board, service charges on electricity do not fall within the services provided by the local authority.

It was further urged by the appellant's counsel that the learned president ought to have considered whether it was reasonable to make the order for recovery of the premises in favour of the respondent. The learned president in his last paragraph, although he gave no reasons, considered it reasonable to grant an order that plaintiff do have recovery of premises No. 380, Penang Road, Penang, together with costs of the suit. I agree with respondent's counsel that paragraph (n) is an additional ground and in no way requires the president to consider reasonableness in a case falling within paragraph (j). It will be noted where reasonableness is required it is expressly provided in the paragraph where the court is required to consider, I refer particularly to section 12(1)(b) where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Ordinance), so far as the obligation is consistent with the provisions of this Ordinance, has been broken or not performed by the tenant and the court considers it *reasonable* that such order or judgment be made or given. This is supported by the case of *Tham Sai Mooi* v. *M.S. Thaver* [3]:—

"The plaintiff (appellant) claimed for possession of certain premises under section 13(1)(k) of the Control of Rent Ordinance, 1948, the defendant (respondent) having been convicted of offences in breach of the law in force relating to Municipalities. He had been served with a notice to quit. The learned president of the sessions court held that there was a general discretion in the court, and also a particular discretion arising from the negative and prohibitory phraseology of the opening lines of section 13(1), and gave judgment for the defendant with costs.

Held on appeal: the trial court has no jurisdiction to exercise a discretion unless it is expressly required to consider the question of reasonableness."

In the circumstances the appeal must be dismissed. Counsel had referred to the question whether the learned president ought to have awarded costs in the court below against the appellant. Having regard to the nature or the basis of the claim for possession by the plaintiff, I think it is within the competence of the learned president to have awarded costs.

This appeal is therefore dismissed also with costs.

Appeal dismissed.

Solicitors: *Jag-Jit Singh; Lim Cheang Ean & Co.*

EU HOONG CHWEE v. CHUA SAY TIONG

[O.C.J. (Raja Azlan Shah J.) March 27, 1968]
[K.L. — Civil Suit No. 1561 of 1966]

Practice and Procedure — Lapse of time for appeal — Application to extend time — O. 64 r. 7, R.S.C. 1957.

Practice and Procedure — Summary judgment under O. 14 — Defendant's absence at hearing — Application under O. 27 r. 15 to set aside judgment — Whether judgment obtained "by default".

The plaintiff, in an action for the recovery of money, made an application for judgment under O. 14. The defendant failed to appear at the date of hearing and the registrar ordered final judgment to be entered against him.

Nothing was done by the defendant until after ten months later when he was served with the bankruptcy notice followed by the usual creditor's petition. He filed this application praying for extension of time to appeal against the final judgment obtained under O. 14, and alternatively to set aside the judgment under O. 27 r. 15.

Held, dismissing the application: (1) from the circumstances of the case, the defendant's application for leave to appeal out of time was made *mala fides*, in order to gain time. The court would not exercise its discretion under O. 64 r. 7 for the extension of time for appeal;

(2) a judgment obtained under O. 14 is not a judgment obtained in default and O. 27 r. 15, therefore has no application to the present case.

Case referred to:—

(1) *Spira* v. *Spira* [1939] 3 All E.R. 924.

CIVIL SUIT.

M. J. Mathew for the plaintiff.

C. Thambiah for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: This case seems to me to raise for authoritative decision the question as to the right of a defendant to ask for leave (1) to appeal out of time against a final judgment under O. 14, and (2) to set aside the said judgment.

Before I proceed further, it will be useful to recount the events that had transpired hitherto. The plaintiff, an architect, claimed against the

defendant for $5,575 being the balance of money due and owing to him in respect of his professional services. The suit was filed on December 7, 1966 and appearance was entered by the defendant on December 22, 1966. On January 3, 1967 the defendant wrote to the plaintiff's solicitor for an extension of time till January 30, 1967 so as to enable him to engage counsel for the purpose of filing a defence. Meanwhile, on January 6, 1967 the plaintiff filed a summons under Order 14 for leave to sign final judgment, and February 2, 1967 was fixed for the hearing of the application. On January 24, 1967 the defendant wrote to the senior assistant registrar to request for a postponement of the hearing on the ground that the matter had been amicably settled and that for this reason he had not engaged counsel. The senior assistant registrar was right in refusing this request as at no stage of the proceedings had the plaintiff confirmed that the matter had in fact been settled as alleged by the defendant. Finally, on February 2, 1967 the defendant failed to appear, whereupon the learned senior assistant registrar proceeded to adjudicate the matter and granted leave to the plaintiff to enter final judgment. It should further be observed that up to that stage no defence or affidavit in reply was filed. However, under O. 54 r. 21 any person affected by any order or decision of a registrar may appeal therefrom to a judge in chambers within five days after the decision complained of, or such further time as may be allowed by a judge or registrar. The defendant did nothing at all until December 6, 1967, some ten months later, when he filed the notice for extension of time through his solicitors. Now, what transpired between February 2, 1967 and December 6, 1967 was this: an order of the said judgment was extracted and a copy thereof was sent to the defendant together with a letter dated March 3, 1967 informing him that unless payment was received in terms of the said order bankruptcy proceedings would be commenced against him, *vide* letter marked 'P.1' and annexed to the affidavit of the plaintiff sworn on January 29, 1968. Nothing was forthcoming until August 9, 1967 when a bankruptcy notice dated July 2, 1967 was served on the defendant, followed by the usual creditor's petition filed on October 6, 1967 which was served on the defendant on October 29, 1967. Subsequently the present application was filed on December 6, 1967.

An application of such nature for extension or enlargement of time is governed by O. 64 r. 7. The power to enlarge or abridge time is purely a discretionary one. I find no merit or substance in the affidavit of the defendant before the court. Each and every one of the allegations stated therein had been categorically denied or satisfactorily answered by the plaintiff in his affidavit in reply. Having looked at the facts and the documents before me, I am of the view that the learned senior assistant registrar was right in making the decision she did, and I am satisfied that the defendant is unable to set up a *bona fide* defence or raise a triable issue. There is clearly no defence in law and no possibility of a real defence on a question of fact. I therefore do not feel disposed to reverse the decision of the learned senior assistant registrar even if I were persuaded to do so. So much for the merits of the defendant's case.

I now come to the delay in making this application, which I can briefly dispose of. The reason proffered for the inordinate delay is untenable and, insofar as I am concerned, wholly unacceptable. If anything had motivated the defendant to file this application at the eleventh hour, it seems to me that it was the bankruptcy petition that was filed against him. It would not be unfair to remark that he probably did this in order to gain time. His intention in filing this application is in my opinion *mala fides*. Having looked into all the circumstances of the case, I am satisfied that there is no ground whatsoever to justify me to grant him this application.

I now come to the other ground of setting aside the judgment entered on February 2, 1967, *vide* O. 27 r. 15. I have nothing further to add to what I have stated above except to say that the law on setting aside a judgment granted in default is well settled and I do not propose to deal with it at length. The question before me is whether the judgment obtained can be set aside under O. 27 r. 15. That is answered in *Spira* v. *Spira* [1] where it was held that a judgment obtained under O. 14 is not a judgment obtained in default and O. 27 r. 15, which is in *pari materia* with ours, had no application. This authority seems to be on all fours with the present case. I need only quote Scott L.J.:—

> "It seems to me that the plaintiff obtained judgment in strict compliance with the requirements of Order 14 and the fault lies with the defendants for not appealing in time. Insofar as they did apply at a later date for an extension of time, that was a matter of pure discretion and the judge acted within his powers. . . . I think the answer to that was that there had been no such default in the proceedings under R.S.C. Order 14, as is contemplated by R.S.C. Order 27 r. 15, and the matter is not one in which the discretion of the court should be exercised in favour of the defendants. . . .".

For my part I would add that a judgment under O. 14 is an adjudication on the merits, and the learned senior assistant registrar had judiciously and in my view properly done so in this case.

I accordingly dismiss this application with costs.

Application dismissed.

Solicitors: *M. J. Mathew; Wilson & Co.*